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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,133	12/02/2003	Gene Squitieri	22278	4738
20551	7590	03/21/2005	EXAMINER	
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 P.O. BOX 1219 SANDY, UT 84070			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/727,133	SQUITIERI, GENE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 18-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-17 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/17/05</u> . | 6) <input type="checkbox"/> Other: ____.                                               |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17, drawn to a method of playing a card game, classified in class 273, subclass 292.
  - II. Claims 18-33, drawn to a computer gaming system apparatus, classified in class 463, subclass 16.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be played on a casino game table.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Vaughn North on 03/16/05 a provisional election was made with traverse to prosecute the invention of the method of playing a card game, claims 1-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

The patent to Smith discloses a method of playing a casino-type game of chance. The game comprises a conventional deck of 52 playing cards, and a playing surface 10 for placing wagers. The playing surface comprises three designated areas 13a-13c for placing three cards dealt from the deck. The three cards dealt are inherently unexposed before being dealt. The playing surface also includes a first wager area 26, 28 identifying the card content based on the numerical sum value of the three cards (at least two cards) dealt, e.g. "Over 20", "Under 20". The sum of twenty itself is not offered, col 4, lines 31-32. Thus, if the sum of the cards dealt were twenty, play would end in the first wager area. The playing surface also includes a second wager area 30-38 identifying the card content based on the card combination of the three cards dealt, e.g. "any pair", "flush", "straight", "3 of a kind", "straight flush". The playing surface also includes a third wager area 52 identifying card content based on the value of one of the cards (center card 13b) dealt, e.g. "A", "2", "3", ..... "J", "Q", "K". The players are provided an opportunity to place a wager on any of the three wager areas. The players are paid any winning wagers.

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Smith clearly discloses the basic method of play concept of the claimed invention, placing dealt cards on designated areas, providing players to place wagers on first wager area (sum value of cards dealt), second wager area (combination of cards dealt), and third wager area (value of one of the cards dealt).

However, in regard to the claimed "second wager area identifying card content dependent upon at least one face card revealed in the at least two cards to be revealed" in claim 1, the limitation in claims 3, 4, 11 simply relates to what order the cards are to be revealed. Determining how the cards are to be revealed (e.g. reveal all three cards at once, reveal two cards first then later reveal the third card, etc.) is simply a casino business decision that is always obvious in the art.

Concerning the claimed "sum value will be single integers between two and ten and between twelve through twenty" in claim 14 simply relates to which cards are being summed. Determining how the cards are to be summed (e.g. summing first two cards, summing all three cards, etc.). is also a casino business that is always obvious in the art.

In regard to the claimed "ending play of the first wager area if the sum value of the at least two cards revealed is equal to eleven", in claim 15 simply relates to a numerical sum for ending play. This is taught in Smith, see above. Determining exactly what numerical sum is used for ending play (e.g. "eleven", "twenty", etc.) is also a casino business that is always obvious in the art.

***Allowable Subject Matter***

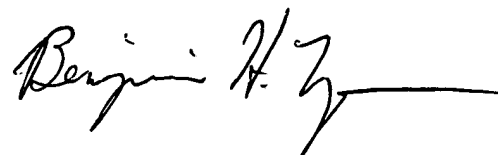
7. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Nazaryan et al., Schaefer, Thompson, and Beltran all disclose card wager games wherein cards are placed in designated areas, and players to place wagers on wager areas identifying content of the cards based on card combinations, and the values of individual cards.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

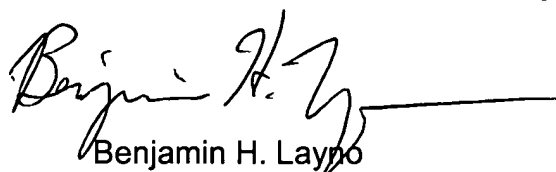
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Benjamin H. Layno", followed by a horizontal line extending to the right.

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Benjamin H. Layno  
Primary Examiner  
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bhl